IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

INCOME TAX REFERENCE No 182 of 1989

For Approval and Signature:

Hon'ble MR.JUSTICE M.S.SHAH
and
Hon'ble MR.JUSTICE K.A.PUJ

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

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COMMISSIONER OF INCOME TAX

Versus

URVAKUNJ NICOTINE INDUSTRIES

Appearance:

1. INCOME TAX REFERENCE No. 182 of 1989
MR DD VYAS for Petitioner No. 1
MR RK PATEL for Respondent No. 1

CORAM : MR.JUSTICE M.S.SHAH
and
MR.JUSTICE K.A.PUJ

Date of decision: 27/06/2002

ORAL JUDGEMENT

(Per : MR.JUSTICE M.S.SHAH)

In this Reference at the instance of the revenue, the following question is referred for our opinion in respect of assessment year 1984-85:-

"Whether on the facts and in the circumstances of the case and in law, the Tribunal is right in holding that the amount received as cash compensatory support is not taxable being a capital receipt?"

2. We have heard Mr DD Vyas, learned counsel for the applicant- revenue and Mr RK Patel, learned counsel for the respondent - assessee.

3. The assessee received a sum of Rs.2,87,155/- as cash compensatory support. The amount was treated as revenue receipt and brought to tax by the ITO. That decision was confirmed by the CIT (Appeals). The Tribunal, however, held that the amount received as cash compensatory support was a capital receipt and, therefore, not taxable. Hence, this Reference at the instance of the revenue.

4. At the hearing today, our attention is invited to the provisions of clause (iiib) of Section 28 of the Income-tax Act, 1961 (hereinafter referred to as "the Act") which was inserted by the Finance Act, 1990 with retrospective effect from 1-4-1967, which read as under:-

28. The following income shall be chargeable to income-tax under the head "Profits and gains of business or profession"-

(i) to (iiia) ....

(iiib) cash assistance (by whatever name called) received or receivable by any person against exports under any scheme of the Government of India;

(iiic) to (v) ....

5. In view of the aforesaid retrospective legislative amendment, now there can be no doubt that the amount received by the respondent - assessee as cash compensatory support was required to be treated as revenue receipt and, therefore, taxable under Section 28 (iiib) of the Act.

6. In view of the above discussion, our answer to the question referred to us is in the negative i.e. in favour of the revenue and against the assessee.

7. The Reference accordingly stands disposed of with no order as to costs.

(M.S. Shah,J) (K.A. Puj,J)

zgs/-